



COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

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C. Scott Crafton
Acting Executive Director
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April 25, 2003

Pat Menichino
James City County Environmental Division
P.O. Box 8784
Williamsburg, Virginia 23187-8784

Re: Silvicultural Violation

Dear Mr. Menichino:

It is my understanding from discussions with the Department of Forestry (DOF) and James City County that there has been a violation of the county's Chesapeake Bay Preservation Ordinance that resulted from a timber harvesting operation on the Stanton property along Ivy Hill Road in Toano. As you know, silvicultural operations are exempt from the requirements of the Bay Act only if they install and maintain the required forestry Best Management Practices (BMPs), as prescribed by the DOF. Apparently the logger did not implement the necessary BMPs during this timber harvest, which resulted in a Streamside Management Zone (SMZ) clearing violation in addition to other water quality concerns on the site associated with improperly constructed haul roads. Because the logger did not adhere to the required forestry BMPs, the silvicultural activity is no longer privileged to an exemption from the Bay Act and is therefore subject to all the requirements of the county's Chesapeake Bay Preservation Ordinance (CBPO), including restoration of the full 100-foot buffer portion of the Resource Protection Area. Therefore, James City County is authorized to:

1. Issue a "stop work" order on the activity until such time as the logger or property owners have submitted the proper paperwork to the county that ensures that the 100-foot buffer portion of the RPA will be restored to its pre-harvest condition and that the remainder of the timber harvesting activity will adhere to the required BMPs or the full requirements of the county's CBPO.
2. Require the immediate stabilization of the disturbed area to ensure that there are no additional impacts to the RPA, RMA, or water quality.
3. Enforce the civil penalties provisions under Section 23-18 of the county's CBPO.
4. Require the revegetation of the full 100-foot buffer portion of the RPA on the entire site.

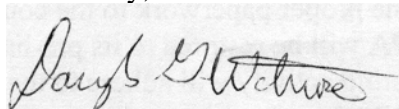
5. Require that the project be subject to all of the provisions of the CBPO, including erosion and sediment control requirements.

In order to prevent any additional water quality impacts, the Department recommends that James City County work closely with the Department of Forestry in the development and review of the stabilization and revegetation plan. Under no circumstances should additional logging activity or land disturbance be allowed within the 100-foot buffer portion of the RPA.

To avoid these types of violations in the future, the county may wish to implement a policy of reviewing proposed silvicultural operations for compliance with the CBPO. According to §10.1-1126.1 of the Code of Virginia, localities have the authority to review proposed silvicultural activities to determine if they comply with local ordinances and regulations. Both the Virginia Supreme Court (*Dail v. York*: April 21, 2000) and the Attorney General (July 2, 1999 opinion) have determined that localities may regulate silvicultural operations by ordinance. The first paragraph of Section 9 VAC 10-20-120 of the Bay Act Regulations states that local governments must require that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the 11 performance criteria contained within that section. Although §10.1-1126.1 of the Code restricts local governments from requiring a permit or imposing a fee for review of proposed silvicultural activities, the local governing body must still determine whether the activity qualifies for an exemption from the Bay Act Regulations. To ensure consistency with the Regulations and reduce the incidence of violations, the local review can and should be done before any vegetation is removed from the property. The county could require some type of submittal, such as a "notice of intent" or a pre-harvest plan, in order to review the project prior to approving the exemption. This would also help to educate the contractor and/or landowner about the required forestry BMPs, the Chesapeake Bay Preservation Act, and the possible consequences of non-compliance. I would recommend that the County coordinate with the DOF to find out when harvests are scheduled to occur within the county. In addition, the county has the authority to inspect any ongoing silvicultural activity (or any other land use activity) in CBPAs to ensure that the land use is consistent with the CBPO, especially when a complaint has been received.

Please feel free to contact me if you have additional questions or concerns.

Sincerely,



Douglas G. Wetmore
Principal Environmental Planner

Cc: Scott Crafton
Martha Little
Shawn Smith
Darryl Cook
Matt Poirot, DOF